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8 *Attorneys for Plaintiffs Cherie Townsend and Jalen Lapree Hamler*

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 CHERIE TOWNSEND, an individual;) Case No. 2-18-cv-10011-R-MAAx

12 JALEN LAPREE HAMLER, an) Hon. Manuel L. Real

13 individual,) Roybal Federal Building

) Courtroom 880, 8th Floor

14 Plaintiffs,)

) **PLAINTIFFS' EX PARTE**

15 V.)

) **APPLICATION FOR AN ORDER**

) **FOR LEAVE TO CONDUCT**

16 JIM MCDONNELL, an individual;)

) **EXPEDITED DISCOVERY AND**

17 CHRISTOPHER BERGNER, an)

) **ORDER FOR PRESERVATION OF**

18 individual; MARCELO QUINTERO,)

) **DOCUMENTS AND EVIDENCE**

19 an individual; MICHAEL AUSTIN, an)

20 individual; LOS ANGELES COUNTY,)

) [Filed concurrently with Declaration of

a public entity; LOS ANGELES)

) Nazareth M. Haysbert]

21 SHERIFF'S DEPARTMENT, a public)

22 entity; SUSAN BROOKS, an)

) Action Filed: November 29, 2018

23 individual; THE CITY OF RANCHO)

) Trial Date: Not yet set.

24 PALOS VERDES, a public entity;)

25 BRITT HUFF, an individual; THE)

CITY OF ROLLING HILLS)

26 ESTATES, a public entity; and DOES)

1-20, inclusive,)

27 Defendants.)

)

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Local Rule 7-19, and Federal Rule of Civil Procedure 26, and 37, Plaintiffs Cherie Townsend and Jalen Lapree Hamler hereby move this Court for an Order on an *ex parte* basis for leave to conduct Expedited Discovery in order to preserve testimony and evidence supporting their claims and to prevent irreparable harm resulting from the spoliation of evidence in this highly unusual and also high-profile case.

Specifically, Plaintiffs' respectfully seek leave of the Court to expedite the following:

1. The depositions of Defendant Sheriff Jim McDonnell, an individual, Defendant Captain Christopher Bergner, an individual, Defendant Sergeant Michael Austin, an individual, Defendant Sergeant Marcelo Quintero, an individual, and the Persons Most Knowledgeable for Defendants' County of Los Angeles and Los Angeles Sheriff's Department, on dates certain, for the purpose of perpetuating their testimony as well as the evidence that such deponents will be asked to produce at their depositions;

2. Plaintiffs also seek a preservation order from the Court requiring the Los Angeles County Sheriff's Department to immediately protect and preserve all evidence and testimony relating to this case effective immediately.

Plaintiffs seek this relief on an *ex parte* basis to avoid irreparable harm to Plaintiffs. Defendant McDonnell and the key Sheriff's Department officers currently working the murder investigation will no longer work for the Sheriff's Department beginning at 12:01 p.m. on Monday, December 3, 2018, which means that Defendant McDonnell and his lead investigative officers will be unable to produce at their depositions, the requisite witness interviews, forensic evidence, and audio and video tape recordings required to conduct meaningful depositions. Thus, this matter must be heard on an expedited basis to ensure the testimony and the evidence currently possessed by the Defendants is preserved. Absent the

testimony and forensic evidence Plaintiff Townsend is seeking now to preserve, there would be nothing to prevent a failure or delay of justice.

Pursuant to Local Rule 7-19.1, on November 29, 2018, counsel for Plaintiffs orally notified the relevant Defendants (in bold), through their legal departments, of Plaintiffs' intention to file this *Ex Parte* Application. The contact information for Defendants is as follows:

<u>Los Angeles Sheriff's Department</u> Civil Litigation Unit 4900 South Eastern Ave., Suite 102 Commerce, CA 90040 323-890-5000	<u>Sheriff Jim McDonnell</u> Civil Litigation Unit 4900 South Eastern Ave., Suite 102 Commerce, CA 323-890-5000
<u>Captain Christopher Bergner</u> Civil Litigation Unit 4900 South Eastern Ave., Suite 102 Commerce, CA 90040 323-890-5000	<u>Sergeant Marcelo Quintero</u> Civil Litigation Unit 4900 South Eastern Ave., Suite 102 Commerce, CA 90040 323-890-5000
<u>Sergeant Michael Austin</u> Civil Litigation Unit 4900 South Eastern Ave., Suite 102 Commerce, CA 90040 323-890-5000	<u>County of Los Angeles</u> <i>Katherine Medina</i> 500 West Temple Street, Room 383 Los Angeles, CA 90012 213-257-2904/ 213-974-3612
<u>Patricia Wilkinson</u> 211 West Temple Street, Suite 1100 Los Angeles, CA 90021 213-257--2250	<u>Los Angeles County District</u> <u>Attorney's Office</u> 210 West Temple Street, 17th Floor Los Angeles, CA 90021 213-257-2904 / 213-974-3612
<u>Susan Brooks</u> 330940 Hawthorne Boulevard Rancho Palos Verdes, CA 90275 cityclerk@rpvca.gov 310-544-5217	<u>City of Rancho Palos Verdes</u> 330940 Hawthorne Boulevard Rancho Palos Verdes, CA 90275 cityclerk@rpvca.gov 310-544-5217
<u>Britt Huff</u> 4045 Palos Verdes Drive North Rolling Hills Estates 90274 heidiL@rollinghillsestatesca.gov 310-377-1577 ext. 102	<u>City of Rolling Hills Estates</u> 4045 Palos Verdes Drive North Rolling Hills Estates 90274 heidiL@rollinghillsestatesca.gov 310-377-1577 ext. 102

1 The individuals and entities listed above have not informed Plaintiffs' counsel
2 whether they will oppose this application or not.

3 This *Ex Parte* Application is based upon the attached Memorandum of Points
4 and Authorities, the accompanying Declaration of Nazareth Haysbert and exhibits
5 thereto, the files and records in this case, and any such other and further arguments
6 and evidence as may properly be presented to the Court.

7
8 DATED: December 3, 2018

HAYSBERT MOULTRIE, LLP

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10 By: /s/ Nazareth M. Haysbert

Nazareth M. Haysbert, Esq.

11 James L. Moultrie III, Esq.

12 *Attorneys for Plaintiffs*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As set forth in her Complaint, filed November 29, 2018, [*See* Dkt. No. 1], Plaintiff Cherie Townsend was falsely accused of the Rolling Hills Shopping Mall murder of Susan Leeds by Sheriff Jim McDonnell, Captain Christopher Bergner, and the Los Angeles County's Sheriff's Department. The Sheriff's Office as well as a local mayor still tell the press and public that she is the sole murder suspect or person of interest in the murder investigation. Meanwhile, no District Attorney's Office believes there is sufficient evidence to charge Ms. Townsend with murder. Indeed, over six months ago, Patricia Wilkinson, the head of the Major Crimes Division of the Los Angeles District Attorney's Office, ordered the Sheriff's Department to release Ms. Townsend from jail, without restrictions, because it lacked sufficient evidence to charge her with a crime. Over six months later, Ms. Townsend has still not been charged with a crime but the Sheriff's Department still has her car, cell phones, and medication as "purported evidence." Ms. Townsend and her two children suffer continuing property and mental injury because of the Sheriff's Department failure to publicly apologize or rule her out officially as a suspect. She also cannot be expected to find work, in that she has been labeled "a murderer" in the eyes of the public.

On or about November 27, 2018, Defendant Sheriff Jim McDonnell was elected out of office by Sheriff-elect, Alex Villanueva. On November 28, 2018, Sheriff-elect Villanueva announced that Sheriff McDonnell's entire command staff would be fired immediately after he is sworn in as Sheriff at 12:01 p.m. on Monday, December 3, 2018. As such, Defendant McDonnell and other key Sheriff's Department officers working the Rolling Hills Murder investigation will no longer work for the Sheriff's Department when the Sheriff-elect is sworn in as Sheriff. Therefore, the relevant parties to this action, including and especially Defendants' Jim McDonnell and Captain Christopher Bergner, will immediately

1 lose access to all documents and records relevant to Plaintiffs' claims. More
2 importantly, the ability to have Sheriff McDonnell produce at a future deposition
3 all the evidence gathered during the murder investigation giving rise to probable
4 cause to arrest Plaintiff Townsend ceases once he is out of office. Such evidence
5 includes not only witness statements and forensic evidence but also evidence in
6 the form of videotapes and recordings of Plaintiff Townsend's arrest and
7 interrogation and the recordings and video made while Plaintiff Townsend was
8 incarcerated in a recorded cell with an undercover law enforcement officer.
9 Furthermore, Plaintiffs' ability to procure Defendant McDonnell's deposition
10 testimony as a private citizen no longer affiliated with the Sheriff's Department is
11 likely to be time-consuming, expensive, and considerably reduced or bogged
12 down with delays.

13 Plaintiffs hereby apply to this Court *ex parte* for an order for leave to
14 expedite discovery in order to avoid these issues, promote judicial economy, and
15 serve the interests of justice.

16 **II. FACTUAL BACKGROUND**

17 On May 3, 2018, a 66-year-old white woman was murdered in a parking lot
18 at the Promenade Mall in the City of Rolling Hills Estates. Her name was Susan
19 Leeds. She was found with multiple stab wounds to the chest and her throat had been
20 slashed. The Los Angeles Sheriff's Department ("LASD") contracts with the City
21 of Rolling Hills Estates for law enforcement and initiated an investigation of the
22 case.

23 On May 16, 2018, at approximately 11:00 p.m., Plaintiff Cherie Townsend, a
24 40-year-old woman of African-American descent and mother of two minor children
25 at the time, was pulled over on the 10 Freeway while traveling near Pomona,
26 California, and was arrested at gunpoint by officers of the Los Angeles Sheriff's
27 Department for the murder of Susan Leeds. Plaintiff Townsend was placed in a jail
28 cell with an undercover law enforcement officer, underwent forensic tests and was

1 questioned by Sergeants Austin and Quintero, among others. On May 18, 2018,
2 representatives of the Los Angeles Sheriff's Department held a press conference
3 identifying Ms. Townsend by name as the arrestee and sole suspect in the murder,
4 despite the limited investigation that was conducted to that point. This press
5 conference was also published on the Sheriff's Department Facebook page and the
6 story was published or broadcast by all local news media outlets, nationally by the
7 Associated Press, and appeared on Twitter, Facebook, and Instagram, including the
8 various social media pages of the Los Angeles Sheriff's Department and the City of
9 Rolling Hills Estates.

10 On May 22, 2018, after six nights in jail, and long after being fingerprinted
11 and submitted to DNA testing, Ms. Townsend was released from custody without
12 restrictions after County prosecutors informed the Sheriff's Department that they did
13 not have enough evidence to charge her. Plaintiff Townsend's automobile, cell
14 phones, and medication, which were inexplicably excluded from the receipt of
15 property, have not been returned to her and are still being held by the Sheriff's
16 Department, along with other personal property of Plaintiff Townsend. As a result
17 of the unreasonable arrest and announcement to the public by the Sheriff's
18 Department officers, the failure of the Los Angeles Sheriff's Department and Los
19 Angeles County to conduct an adequate investigation before labeling someone as a
20 murderer, the failure of the Los Angeles Sheriff's Department to provide an accurate
21 receipt for the return of Ms. Townsend's property, and the now widespread belief
22 that Ms. Townsend committed such a heinous murder, Ms. Townsend and her family
23 have sustained significant and permanent injuries to their mind, property, and social
24 well-being.

25 On November 29, 2018, Plaintiffs filed a complaint in this Court against,
26 among others, Sheriff James McDonnell, an individual, Captain Chris Bergner, an
27 individual, Sergeant Michael Austin, an individual, Sergeant Marcelo Quintero, an
28 individual, the Los Angeles Sheriff's Department, a public entity, Los Angeles

County, a public entity, Susan Brooks, an individual, the City of Rancho Palos Verdes, a public entity, Britt Huff, an individual, the City of Rolling Hills Estates, and various Does for, inter alia, Fourth and Fourteenth Amendment violations; defamation-plus liability; *Monell* liability; defamation; intentional infliction of emotional distress; negligent infliction of emotional distress; false arrest/imprisonment; and Bane Act liability.

III. ARGUMENT

An *ex parte* motion must “establish why [a] motion for the ultimate relief requested cannot be calendared in the usual manner.” *Mission Power Eng’g Co. v. Cont’l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995); *In re City of San Bernardino, California*, 2015 WL 5104903 (C.D. Cal. 2015). *Ex parte* relief is justified when there is a threat of immediate or irreparable injury and when the party seeks a routine procedural order that cannot be obtained through a regularly noticed motion. *In re Intermagnetics America, Inc.*, 101 B.R. 191, 193 (C.D. Cal. 1989); *Moore v. Chase, Inc.*, WL 4636750, at 2 (E.D. Cal. Aug. 3, 2015).

Here, a petition for the ultimate relief requested cannot be calendared in the usual manner because Defendant Sheriff James McDonnell has been elected out of office and Defendant McDonnell and other key Sheriff’s Department officers working the Rolling Hills Murder investigation will no longer work for the Sheriff’s Department when Sheriff-elect Alex Villanueva is sworn in as Sheriff on December 3, 2018 at 12:01 p.m. When this occurs, Plaintiffs’ ability to procure the deposition testimony of Defendant McDonnell as a private citizen no longer affiliated with the Sheriff’s Department will be reduced or could be bogged down with delays. Furthermore, the relevant parties to this action, including and especially Defendants’ Jim McDonnell and Captain Christopher Bergner, will immediately lose access to all documents and records relevant to Plaintiffs’ claims, and the ability to have Sheriff McDonnell produce at his deposition all the evidence gathered during the murder investigation giving rise to probable cause to arrest Plaintiff Townsend will

1 cease once he is out of office. Such evidence includes not only witness statements
2 and forensic evidence but also evidence in the form of videotapes and recordings of
3 Plaintiff Townsend's arrest and interrogation and the recordings and video made
4 while Plaintiff Townsend was incarcerated. Hence, Plaintiffs' request for the
5 expedited deposition of Sheriff McDonnell and the preservation of all evidence
6 obtained by the Defendants is of the utmost urgency.

7 Furthermore, it is especially critical that the depositions of Sheriff
8 McDonnell and the three other lead officers of the Los Angeles Sheriff's
9 Department conducting the investigation of the murder of Susan Leeds leading to
10 the arrest and labeling of Plaintiff Townsend as the sole murder suspect be taken
11 while memories are fresh and the evidence, witness statements, forensic evidence,
12 videotapes and recordings leading to Plaintiff's arrest and being labeled as the sole
13 murder suspect can be readily located and produced in conjunction with the
14 depositions of Defendant McDonnell, Defendant Bergner, and investigating
15 detectives, Defendants' Marcelo Quintero and Michael Austin.

16 Here, the need to preserve the witness statements, forensic evidence and all
17 video and audio recordings of the arrest, interrogation and jail house informant's
18 involvement is as crucial as the underlying depositions themselves. This is
19 especially the case here where there seems to have been a rush to judgment and
20 continual labeling and harassment of Plaintiff Cherie Townsend as the sole murder
21 suspect or person of interest in this case even though two sets of prosecutors
22 informed the Sheriff's Department over six months ago that they did not have
23 enough evidence to prosecute for murder and Plaintiff has not been charged with
24 any crime.

25 Plaintiffs desire to expedite the testimony of Sheriff James McDonnell,
26 Captain Chris Bergner, Sergeant Marcelo Quintero and Sergeant Michael Austin and
27 the person's most knowledgeable for the County of Los Angeles and the Los
28 Angeles Sheriff's Department. The substance of this testimony is expected to be as

1 follows, among *inter alia*: a.) what led the investigating officers to initially conclude
 2 Plaintiff Cherie Townsend was a suspect; b.) what is the evidence supporting the
 3 probable cause to arrest Plaintiff Cherie Townsend; c.) what did the Sheriff's
 4 Department know by the second day of Plaintiff Townsend's incarceration that led
 5 Sheriff James McDonnell to label Plaintiff Townsend publicly as the sole suspect in
 6 Susan Leed's murder; d.) what forensic evidence or witness statements tie Plaintiff
 7 Cherie Townsend to Susan Leed's murder; e.) what did the Sheriff's Department
 8 learn from the jail house informant; f.) why has the Sheriff's Department not
 9 investigated the tips received on the tip hotline that it should investigate Mr. Leeds,
 10 Susan Leed's husband, as the murderer or for complicity in a murder for hire scheme;
 11 g.) why has the Sheriff's Department failed as to date to interview any of Susan
 12 Leed's neighbors, as it has been suggested on the tip hotline that it should; and, h.)
 13 why has the Sheriff's Department failed to return Plaintiff Cherie Townsend's
 14 automobile, cell telephones and medications (in other words, what makes these items
 15 still evidence if there is insufficient evidence to try Plaintiff Townsend for murder).

16 **IV. CONCLUSION**

17 In light of the foregoing, Plaintiffs pray the Court for an order authorizing
 18 their counsel to take the depositions of Sheriff James McDonnell, an individual,
 19 Captain Christopher Bergner, an individual, Sergeant Michael Austin, an individual,
 20 Sergeant Marcelo Quintero, an individual, and the persons most knowledgeable for
 21 the County of Los Angeles and the Los Angeles Sheriff's Department, on an
 22 expedited basis, for the purpose of perpetuating their testimony as well as the
 23 evidence that such deponents will be asked to produce at their depositions. Such
 24 Application must be heard on shortened time so that such depositions can be ordered,
 25 and evidence preserved before Sheriff McDonnell and his lead investigative officers
 26 lose the ability to produce at their depositions the requisite witness interviews,
 27 forensic evidence, and audio and video tape recordings required to conduct
 28 meaningful depositions.

1 DATED: December 3, 2018

HAYSBERT MOULTRIE, LLP

2
3 By: /s/ Nazareth M. Haysbert

Nazareth M. Haysbert, Esq.

4 James L. Moultrie III, Esq.

5 *Attorneys for Plaintiffs*
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